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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 LESLIE JACK, et al.,

11 Plaintiffs,

12 v.

13 BORG-WARNER MORSE TEC,
14 LLC, et al.,

15 Defendants.

CASE NO. C17-0537JLR

ORDER CLARIFYING ORDER
ON SUMMARY JUDGMENT
MOTIONS

16 On September 17, 2018, the court issued an order resolving several motions for
17 summary judgment (Order (Dkt. # 706)). Among those motions was Defendant
18 Borg-Warner Morse TEC, LLC's ("Borg-Warner") motion for summary judgment
19 (Borg-Warner MSJ (Dkt. # 518)). Plaintiffs Leslie Jack and David Jack (collectively,
20 "Plaintiffs") opposed Borg-Warner's motion (Pl. Resp. (Dkt. # 613)). The court issues
21 this order to clarify its resolution of Borg-Warner's motion with respect to the issue of
22 Mr. Jack's alleged exposure to asbestos-containing Borg-Warner brakes.

1 In moving for summary judgment, Borg-Warner argued that Plaintiffs could not
2 show that Mr. Jack was exposed to asbestos on account of Borg-Warner's conduct.
3 (Borg-Warner MSJ at 1.) In response, Plaintiffs contended that Mr. Jack was exposed to
4 asbestos-containing Borg-Warner automotive products, including Borg-Warner-branded
5 brakes. (Pl. Resp. at 4.) Plaintiffs emphasized that Mr. Jack recalled using Borg-Warner
6 brakes between 1964 and approximately 2007 in connection with various racecars.
7 (Adams Decl. (Dkt. # 614) ¶ 2, Ex. C ("Jack Perp. Dep.") at 169:5-24, 208:3-209:14; *see*
8 *also* Pl. Resp. at 4 ("[Mr. Jack] recalls using BorgWarner brakes at some point.").)
9 Specifically, Mr. Jack testified that he used Borg-Warner brakes in the course of
10 maintaining his 1960 and 1962 Pontiac racecars. (Jack Perp. Dep. at 169:13-18.) He
11 further stated that he used Borg-Warner brakes on cars he and his neighbor built for
12 racing in the Bonneville Salt Flats many years later. (*Id.* at 208:3-209:14.)

13 The court granted summary judgment to Borg-Warner on the issue of Mr. Jack's
14 alleged exposure from Borg-Warner brakes on the ground that Plaintiffs failed to show
15 that Borg-Warner manufactured asbestos-containing brakes during the relevant period.
16 (Order at 44.) In the body of their response, Plaintiffs cited no evidence that
17 Borg-Warner brakes contained asbestos between 1964 and 2007. (*See generally* Pl.
18 Resp.) Notably, in the section of their briefing dedicated to showing that "BorgWarner
19 friction products contained asbestos," Plaintiffs did not mention Borg-Warner brakes.
20 (*Id.* at 5.) However, Plaintiffs embedded in their statement of facts a footnote declaring
21 that "BorgWarner manufactured brakes from 1971 to 1975." (*Id.* at 4 n.3.) To support
22 that assertion, Plaintiffs cited one of Borg-Warner's responses to Plaintiffs' requests for

1 admission. (*See id.* (citing Adams Decl. (Dkt. # 614) ¶ 2, Ex. J (“Admis.”) at 5-6).) In
2 that admission, Borg-Warner conceded that its predecessor, Borg-Warner Corporation,
3 “manufactured disc brake pads, which incorporated chrysotile (serpentine) asbestos fibers
4 . . . under the ‘Borg-Warner’ brand name for limited Ford and Mercury vehicles, models
5 1971-1975, for special and limited applications.” (Admis. at 5-6.) The court’s summary
6 judgment order does not expressly address this admission.¹

7 Taking into account all of Plaintiffs’ evidence on Borg-Warner brakes, and
8 drawing all reasonable inferences in Plaintiffs’ favor, the court concludes that
9 Borg-Warner remains entitled to summary judgment on the issue of Mr. Jack’s alleged
10 exposure to asbestos-containing Borg-Warner brakes. The admission concerning disc
11 brake pads pertains only to “limited Ford and Mercury vehicles.” (*Id.*) Yet Plaintiffs
12 provide no evidence that Mr. Jack ever raced or maintained a Ford or Mercury vehicle
13 produced between 1971 and 1975. (*See generally* Pl. Resp. Borg-Warner.) To the
14 contrary, the only racecars Mr. Jack specifically recalled having worked on were 1960
15 and 1962 Pontiacs (Jack Perp. Dep. at 145:22-146:7) and cars he and his neighbor “built”
16 themselves (*id.* at 208:3-8). Nor do Plaintiffs produce any evidence that Borg-Warner

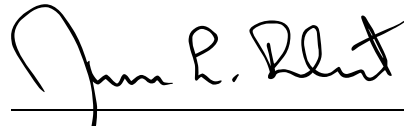
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19 ¹ As the above summary of Plaintiffs’ evidence suggests, Plaintiffs’ briefing was not a
20 model of clarity. The footnote in question does not state that the brakes Borg-Warner
21 manufactured in the 1970s ever contained asbestos; Plaintiffs leave the court to find that tidbit on
22 its own. But as the Ninth Circuit observes, “judges are not like pigs, hunting for truffles buried
in briefs.” *Indep. Towers of Wash. v. Washington*, 350 F.3d 925, 929 (9th Cir. 2003) (quoting
United States v. Dunkel, 927 F.2d 955, 956 (7th Cir. 1991)). The court cautions counsel to do
better going forward.

1 manufactured asbestos-containing replacement brakes that Mr. Jack could have acquired
2 for use on his racecars. (*See generally* Pl. Resp.)

3 In short, Plaintiffs fail to establish a “reasonable connection” between Mr. Jack’s
4 injury and Borg-Warner’s asbestos-containing brakes. *Lockwood v. AC & S, Inc.*, 744
5 P.2d 605, 612 (Wash. 1987). Borg-Warner is thus entitled to summary judgment on the
6 issue of Mr. Jack’s alleged exposure to asbestos-containing Borg-Warner brakes. The
7 court further notes that its ruling on Borg-Warner’s second motion in limine, which
8 concerned the exclusion of evidence of Borg-Warner products not linked to Mr. Jack’s
9 asbestos exposure, remains unchanged. (*See* Borg-Warner MIL (Dkt. # 663) at 5-6;
10 9/17/2018 Min. Entry (Dkt. # 707) (referring the parties to the court’s statements on the
11 record for rulings on motions in limine).)

12 Dated this 20th day of September, 2018.

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15 The Honorable James L. Robart
16 U.S. District Court Judge
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